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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,145	04/12/2004	Zong Kai Yang	Q80815	1166
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SUITE 800				
WASHINGTON, DC 20037				
EXAMINER				
JAIN, RAJ K				
ART UNIT		PAPER NUMBER		
2416				
MAIL DATE		DELIVERY MODE		
12/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/822,145

Applicant(s)

YANG ET AL.

Examiner

RAJ JAIN

Art Unit

2416

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 3.5-7 and 13-17.

Claim(s) rejected: 1, 2, 8-12 and 18-20.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/William Trost/
Supervisory Patent Examiner, Art Unit 2416

/RAJ JAIN/
Examiner, Art Unit 2416

Continuation of 11, does NOT place the application in condition for allowance because: Continuation of 11, does NOT place the application in condition for allowance because: Applicant's amendment to claim 1, from "start" service time to "finish" service time changing the scope of the claim, thus requiring further consideration and/or search.

With respect to claim 1, Applicant contends "Shao, does not disclose or suggest queuing the packets in a classified stream based on whether the packet is a first packet or a subsequent packet"...

Examiner respectfully disagrees, Shao classifies packet streams based on length (emphasis added) and WFQ (paras 23 & 44), the data rate is determined by the modulation scheme employed for the particular type of data being transmitted (paras 5 & 40). Incoming packets are classified by classifier 120 (Fig. 1) and forwarded to one queue pair 170 (para 37). First of all packets are shaped before being queued (para 43) and then differentiated by MCS levels within the same class (para 54) and queued correspondingly using a delay factor based on packet length (paras 63 & 79) to appropriate queues 170. Thus a first packet of a stream may have different delay factor than the second stream and therefore will be queued separately, and therefore the Examiner asserts Shao inherently discloses queuing of subsequent packets to a second stream queue using a delay factor based on packet length which can be different than say the first packet. Thus since Shao does disclose all recited features of claim 1, the rejection to claim 1 is sustained.

With respect to claim 11, Applicant contends one would not be motivated to combine Chiussi within Shao to arrive at applicant's invention. Examiner respectfully disagrees, a SEFF selector allows packet selection based on a minimum service timestamp among sessions and thus reducing backlogged flows. Thus it would have been obvious at the time the invention was made to incorporate the teachings of Chiussi within Shao so as to maintain proper session flow amongst backlogged queues.

The Examiner asserts that the motivation provided is valid and proper and therefore the rejection to claim 11 is sustained. Furthermore, the rejection to claims 4, 12, 18-20 is sustained based on limitations being met within the cited art(s).